

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CURTIS WONG AND STEVEN DRUCKER

Appeal 2007-0985
Application 09/650,481
Technology Center 2600

Decided: April 19, 2007

Before JAMES D. THOMAS, JOSEPH F. RUGGIERO, and JOSEPH
L. DIXON, *Administrative Patent Judges*.
DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's Final Rejection of claims 1-26.

We AFFIRM.

BACKGROUND

Appellants' invention relates to a system and method for identifying audio/visual programs to be recorded. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A system for representing at least one of an audio and visual program, comprising:

a token having a schema that identifies a corresponding program so that a recording system receiving the token is programmable to record the program based on the token, the token being transportable between at least two computers.

PRIOR ART

The prior art reference of record relied upon by the Examiner in rejecting the appealed claims is:

Hirata	US 6,374,416 B2	Apr. 16, 2002 (filed Mar. 16, 1998)
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REJECTIONS

Claims 1-4, 7-9, 13, 16, 18-19, 20-23, and 25-26 stand rejected under 35 U.S.C. 102(e) as being anticipated by Hirata.

Claims 5-6, 10-12, 14-15, 17, and 24 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Hirata.

Rather than reiterate the conflicting viewpoints advanced by the Examiner and the Appellants regarding the above-noted rejection, we make reference to the Examiner's Answer (mailed Jan. 27, 2005) for the reasoning in support of the rejections, and to Appellants' Brief (filed Oct. 1, 2004) and Reply Brief (filed Mar. 8, 2005) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to Appellants' Specification and claims, to the applied prior art references, and to the respective positions articulated by Appellants and the Examiner. As a consequence of our review, we make the determinations that follow.

35 U.S.C. § 102

Appellants contend Hirata does not disclose the limitation a "token having a *schema*" (Br. 5). Appellants contend that the claimed schema is a data structure and that:

token *schema* is defined in the subject application as a *data structure* that contains a *plurality* of fields for holding different types of data. (See e.g., Application at p. 30, lines 27-30). The *different types* of data may include, for example, a global unique identifier ("GUID"), a program GUID, billing information, program characteristics, program

descriptions, images, video clips, authentication elements, passwords, encryption elements, personal video recorder ("PVR") GUID, and account information. (See Application at pp. 31-33). Thus, the token *schema* with a *plurality* of fields for holding *different types* of data provides for a variety of functionality such as encryption, password protection, tracking, automated billing, and can even provide video clips to allow a user to preview the selected program (Br. 5-6).

We have included a lengthy portion of the Specification to show and put into context the asserted proposed definition of the "token having a schema" as recited in independent claim 1.

Fig. 8 illustrates an example of a token schema 450 that may be utilized in accordance with an aspect of the present invention. The token schema 450 may be a multi-level data structure that contains a plurality of fields for holding different types of data. Each field also may contain actual data, such as in the form of raw data, an object, a component, a module, etc., or a link to the data associated with the link. By way of example, the schema 450 includes a header 452 that identifies a group of data as a token as well as may define attributes of the token schema and/or the different levels of data.

The token schema 450 may include a globally unique identifier for a token (a "token GUID") 454, which uniquely identifies a respective token obtained from a server 20 (Fig. 1B). A service provider, for example, may employ the token GUID 454, to track a token as it is transmitted from one computer to another as well as to provide a link between a specific token and billing information, such as in situations when a token corresponds to a program that has been purchased or rented from a service provider.

The token schema 450 also includes program criteria 456 for identifying different characteristics of the audio and/or visual program represented by a token. One aspect of the program criteria 456 may be a global unique identifier (GUID) 458 identifying a specific program (hereinafter referred to as a "program GUID"). The program GUID 458, for example, may be a unique program identification number (or series

of numbers and other characters) that represents a specific program, such as may be established by a service provider. A program GUID 458 may further include other data that may be employed to uniquely identify a program, either globally or in a local tuning space. The program GUID individually may identify a program with sufficient particularity so that a recording system may be programmed to record the program represented by the token.

The program criteria 456 further may include one or more other program characteristics 460 that may be employed to help identify a program. As illustrated in the example of Fig. 8, the program characteristics 460 may include data identifying different aspects of a program, such as, for example: title, keywords, rating, director, producer(s), actors and/or actresses, host(s), format, category, channel or broadcast network, genre, broadcast date, broadcast time (if known), program duration, a URL link to information (e.g., other program characteristics, a program GUID, local tuning space information, etc.) about the program, and/or any other aspect of a program that could be used to help identify a particular program. (Specification, p 30, l. 27– p. 31, l. 29)

We note that the Specification is replete with alternatives and examples without any set definitive embodiments. While this may allow Appellants a wide range of equivalents later in the life of the patent, we find it does not allow for a definitive definition of claim terminology. Rather, we find the express language relied upon by Appellants from the Specification is couched with exemplary language “Fig. 8 illustrates an *example* of a token schema 450 that *may* be utilized in accordance with an aspect of the present invention. The token schema 450 *may* be a multi-level data structure that contains a plurality of fields for holding different types of data.” We find that the expansive nature of the asserted definition is such that we find the term to be undefined by the Specification. In evaluating the described

invention, we find it difficult to discern what is within the metes and bounds of the claim language and what is excluded from or non-equivalent to the claimed limitation.

Moreover, we note that the language of independent claim 1 and independent claim 8 additionally is drafted in the ability to perform a function “transportable” and “adapted to be transmitted.” We find that the ability to perform a function is broader than the actual performance of these functions.

With respect to independent claim 1, Appellants contend that Hirata does not teach a token having a schema or data structure that contains a plurality of fields for holding different types of data which provide a variety of functionality (Br. 5-6). Appellants argue that Hirata teaches an email that contains one type of data (a control command) and that performs only one type of function (programming a device) (Br. 6). Appellants contend that the tokens having a schema of the subject claims are distinguishable from the emails of Hirata in terms of the data structure, variety of data content, and degree of functionality (Br. 6). We disagree with Appellants and find that Appellants’ contentions are not commensurate in scope with the express language of independent claim 1. Furthermore, we find it unreasonable to interpret the claim language of independent claim 1 as advanced by Appellants due to the exemplary nature of the Specification, as discussed above. Therefore, Appellants’ argument is not persuasive.

Appellants contend that the Examiner addressed the functional aspects of the token having a schema, but not the structural aspects. Appellants contend that the schema is a structural limitation and that the data structure

with a plurality of fields is structurally different than the email of Hirata. We cannot agree with Appellants' contention since we find no express or implied structure for the data recited in the language of independent claim 1. Therefore, Appellants' argument is not persuasive.

Appellants argue that the data of Hirata is a character string not a schema (Br. 7). We disagree and find that the email of Hirata has some structure to the data and would have been a data structure or schema in view of the generalized interpretation that we have found in Appellants' Specification. Therefore, Appellants' argument is not persuasive.

Appellants argue that the Examiner has taken the position that the email of Hirata is a data structure identical to the token having a schema (Reply Br. 2). We find no support for Appellants' characterization of the Examiner's position. The Examiner merely identified that there is not support in the language of independent claim 1 for Appellants' contention and found that the teachings of Hirata are a functional equivalent to the recited token with a schema (Answer 8). We agree with the Examiner and cannot agree with Appellants' interpretation of the Examiner's arguments.

Additionally, Appellants argue that under claim differentiation, the token having a schema cannot be an email (Reply Br. 2). We cannot agree with Appellants since we do not find support in the language of independent claim for this argument. Furthermore, while this argument to these dependent claims may be persuasive as to the dependent claims, Appellants have not separately argued these claims. Therefore, Appellants' argument is not persuasive, and we will sustain the rejection of independent claim 1 and those claims grouped therewith.

We recognize that the Examiner's rejection of the independent claims may have been better and easier formulated as a rejection under 35 U.S.C. § 103(a), but we agree that the rejection under 35 U.S.C. § 102 is appropriate and proper.

35 U.S.C. § 103

With respect to dependent claim 5, Appellants rely upon the arguments set forth with respect to independent claim 1 which we did not find persuasive. Similarly, we do not find the same arguments persuasive under 35 U.S.C. § 103(a). Therefore, Appellants' argument is not persuasive, and we will sustain the rejection of claim 5 and the claims grouped therewith.

CONCLUSION

To summarize, we have sustained the rejections of claims 1-26 under 35 U.S.C. §§ 102 and 103.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

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